

preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

(k) The effective date of a merger or consolidation shall be a date which is not less than 50 days after the date of mailing of the notification of the results of the stockholder vote. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of the stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date shall be not less than 15 days after the date of the reconsideration vote.

[50 FR 20400, May 16, 1985; 50 FR 32165, Aug. 9, 1985, as amended at 51 FR 32441, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988; 56 FR 2674, Jan. 24, 1991; 58 FR 48790, Sept. 20, 1993]

**§ 611.1123 Merger or consolidation agreements.**

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

(1) The proposed effective date of the merger or consolidation.

(2) The proposed name and headquarters location of the continuing or consolidated association.

(3) The names of the persons nominated to serve as directors until the first regular annual meeting of the continuing or consolidated association to be held after the effective date of the merger or consolidation. Any director of a constituent association may be designated in the agreement to serve as a director of the continuing or consolidated association for a period not to exceed his or her current term, after which he or she must stand for reelection. However, the terms of the agreement must provide for the election of at least one director at each annual meeting subsequent to the effective date of the merger or consolidation. The bylaws of the continuing or consolidated association shall reflect the provisions of the merger or consolidation agreement regarding director terms.

(4) A statement of the formula to be used to exchange the stock of the constituent associations for the stock of the continuing or consolidated association. No fractional shares of stock shall be issued.

(5) A statement of any conditions which must be satisfied prior to the effective date of the proposed transaction, including but not limited to approval by stockholders, the supervising bank, and the Farm Credit Administration.

(6) A statement of the representations or warranties, if any, made or to be made by any association, or its officers, directors, or employees that is a party to the proposed transactions.

(7) A statement that the board of directors of each constituent association can terminate the agreement before the effective date upon a determination by an association, with the concurrence of the Farm Credit Administration, that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the merger or consolidation;

(iii) Fraudulent activities were used to obtain stockholders' approval; or

(iv) An event occurred between the time of the vote and the merger that would have a significant adverse impact on the future viability of the continuing institution.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations.

(10) Provision for the employee benefits plan, its subsequent continuation or adaptation by the board of directors of the proposed institution following the merger or consolidation.

(11) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of

the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders eligible to vote of one or more of the constituent institutions is filed with the Farm Credit Administration within 35 days after the date of mailing the notification of the final results of the stockholder vote required under § 611.1122(g). The Farm Credit Administration will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition complies with the applicable requirements, a special stockholders meeting shall be called by the institution to reconsider the vote. If a majority of the stockholders voting, in person or by proxy, of any one of the constituent institutions that is a party to the merger vote against the merger, the merger shall not take place.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32442, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988]

#### § 611.1124 Territorial adjustments.

This section shall apply to any request submitted to the Farm Credit Administration to modify association charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association shall submit a proposal to the district bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders

and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred.

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred.

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par.

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association.

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association.

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid.

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association.

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the Farm Credit Administration.

(c) Upon receipt of documents supporting a proposed territory transfer, the district bank shall review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of